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HOUSE BILL 390

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO GAMING; DEFINING TECHNICIANS THAT REPAIR AND SERVICE GAMING DEVICES OR ASSOCIATED EQUIPMENT; TRANSFERRING RESPONSIBILITY FOR APPROVAL OF TECHNICIANS TO THE GAMING CONTROL BOARD FROM MANUFACTURER LICENSEES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-2E-3 NMSA 1978 (being Laws 1997, Chapter 190, Section 5, as amended) is amended to read:

"60-2E-3. DEFINITIONS.--As used in the Gaming Control Act:

A. "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person;

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1 B. "affiliated company" means a company that:
2 (1) controls, is controlled by or is under
3 common control with a company licensee; and

4 (2) is involved in gaming activities or
5 involved in the ownership of property on which gaming is
6 conducted;

7 C. "applicant" means a person who has applied for a
8 license or for approval of an act or transaction for which
9 approval is required or allowed pursuant to the provisions of
10 the Gaming Control Act;

11 D. "application" means a request for the issuance
12 of a license or for approval of an act or transaction for which
13 approval is required or allowed pursuant to the provisions of
14 the Gaming Control Act, but "application" does not include a
15 supplemental form or information that may be required with the
16 application;

17 E. "associated equipment" means equipment or a
18 mechanical, electromechanical or electronic contrivance,
19 component or machine used in connection with gaming activity;

20 F. "board" means the gaming control board;

21 G. "certification" means a notice of approval by
22 the board of a person required to be certified by the board;

23 ~~H. "certified technician" means a person certified~~
24 ~~by a manufacturer licensee to repair and service gaming~~
25 ~~devices, but who is prohibited from programming gaming devices;~~

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1 ~~F.~~ H. "company" means a corporation, partnership,
2 limited partnership, trust, association, joint stock company,
3 joint venture, limited liability company or other form of
4 business organization that is not a natural person; "company"
5 does not mean a nonprofit organization;

6 ~~J.~~ I. "distributor" means a person who supplies
7 gaming devices to a gaming operator but does not manufacture
8 gaming devices;

9 ~~K.~~ J. "equity security" means an interest in a
10 company that is evidenced by:

11 (1) voting stock or similar security;

12 (2) a security convertible into voting stock
13 or similar security, with or without consideration, or a
14 security carrying a warrant or right to subscribe to or
15 purchase voting stock or similar security;

16 (3) a warrant or right to subscribe to or
17 purchase voting stock or similar security; or

18 (4) a security having a direct or indirect
19 participation in the profits of the issuer;

20 ~~L.~~ K. "executive director" means the chief
21 administrative officer appointed by the board pursuant to
22 Section 60-2E-7 NMSA 1978;

23 ~~M.~~ L. "finding of suitability" means a
24 certification of approval issued by the board permitting a
25 person to be involved directly or indirectly with a licensee,

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1 relating only to the specified involvement for which it is
2 made;

3 [N-] M. "game" means an activity in which, upon
4 payment of consideration, a player receives a prize or other
5 thing of value, the award of which is determined by chance even
6 though accompanied by some skill; "game" does not include an
7 activity played in a private residence in which no person makes
8 money for operating the activity except through winnings as a
9 player;

10 [O-] N. "gaming" means offering a game for play;

11 [P-] O. "gaming activity" means an endeavor
12 associated with the manufacture or distribution of gaming
13 devices or the conduct of gaming;

14 [Q-] P. "gaming device" means associated equipment
15 or a gaming machine and includes a system for processing
16 information that can alter the normal criteria of random
17 selection that affects the operation of a game or determines
18 the outcome of a game;

19 [R-] Q. "gaming employee" means a person connected
20 directly with a gaming activity; "gaming employee" does not
21 include:

22 (1) bartenders, cocktail servers or other
23 persons engaged solely in preparing or serving food or
24 beverages;

25 (2) secretarial or janitorial personnel;

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1 (3) stage, sound and light technicians; or

2 (4) other nongaming personnel;

3 [~~S.~~] R. "gaming establishment" means the premises
4 on or in which gaming is conducted;

5 [~~T.~~] S. "gaming machine" means a mechanical,
6 electromechanical or electronic contrivance or machine that,
7 upon insertion of a coin, token or similar object, or upon
8 payment of any consideration, is available to play or operate a
9 game, whether the payoff is made automatically from the machine
10 or in any other manner;

11 [~~U.~~] T. "gaming operator" means a person who
12 conducts gaming;

13 [~~V.~~] U. "holding company" means a company that
14 directly or indirectly owns or has the power or right to
15 control a company that is an applicant or licensee, but a
16 company that does not have a beneficial ownership of more than
17 ten percent of the equity securities of a publicly traded
18 corporation is not a holding company;

19 [~~W.~~] V. "immediate family" means natural persons
20 who are related to a specified natural person by affinity or
21 consanguinity in the first through the third degree;

22 [~~X.~~] W. "independent administrator" means a person
23 who administers an annuity, who is not associated in any manner
24 with the gaming operator licensee for which the annuity was
25 purchased and is in no way associated with the person who will

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1 be receiving the annuity;

2 ~~[Y.]~~ X. "institutional investor" means a state or
3 federal government pension plan or a person that meets the
4 requirements of a qualified institutional buyer as defined in
5 Rule 144A of the federal Securities Act of 1933, and is:

6 (1) a bank as defined in Section 3(a)(6) of
7 the federal Securities Exchange Act of 1934;

8 (2) an insurance company as defined in Section
9 2(a)(17) of the federal Investment Company Act of 1940;

10 (3) an investment company registered under
11 Section 8 of the federal Investment Company Act of 1940;

12 (4) an investment adviser registered under
13 Section 203 of the federal Investment Advisers Act of 1940;

14 (5) collective trust funds as defined in
15 Section 3(c)(11) of the federal Investment Company Act of 1940;

16 (6) an employee benefit plan or pension fund
17 that is subject to the federal Employee Retirement Income
18 Security Act of 1974, excluding an employee benefit plan or
19 pension fund sponsored by a publicly traded corporation
20 registered with the board; or

21 (7) a group comprised entirely of persons
22 specified in Paragraphs (1) through (6) of this subsection;

23 ~~[Z.]~~ Y. "intermediary company" means a company
24 that:

25 (1) is a holding company with respect to a

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1 company that is an applicant or licensee; and

2 (2) is a subsidiary with respect to any
3 holding company;

4 [~~AA-~~] Z. "key executive" means an executive of a
5 licensee or other person having the power to exercise
6 significant influence over decisions concerning any part of the
7 licensed operations of the licensee or whose compensation
8 exceeds an amount established by the board in a rule;

9 [~~BB-~~] AA. "license" means an authorization required
10 by the board for engaging in gaming activities;

11 [~~CC-~~] BB. "licensee" means a person to whom a valid
12 license has been issued;

13 [~~DD-~~] CC. "manufacturer" means a person who
14 manufactures, fabricates, assembles, produces, programs or
15 makes modifications to any gaming device for use or play in New
16 Mexico or for sale, lease or distribution outside New Mexico
17 from any location within New Mexico;

18 [~~EE-~~] DD. "net take" means the total of the
19 following, less the total of all cash paid out as losses to
20 winning patrons and those amounts paid to purchase annuities to
21 fund losses paid to winning patrons over several years by
22 independent administrators:

23 (1) cash received from patrons for playing a
24 game;

25 (2) cash received in payment for credit

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1 extended by a licensee to a patron for playing a game; and

2 (3) compensation received for conducting a
3 game in which the licensee is not a party to a wager;

4 [~~FF.~~] EE. "nonprofit organization" means:

5 (1) a bona fide chartered or incorporated
6 branch, lodge, order or association, in existence in New Mexico
7 prior to January 1, 1997, of a fraternal organization that is
8 described in Section 501(c)(8) or (10) of the federal Internal
9 Revenue Code of 1986 and that is exempt from federal income
10 taxation pursuant to Section 501(a) of that code; or

11 (2) a bona fide chartered or incorporated
12 post, auxiliary unit or society of, or a trust or foundation
13 for the post or auxiliary unit, in existence in New Mexico
14 prior to January 1, 1997, of a veterans' organization that is
15 described in Section 501(c)(19) or (23) of the federal Internal
16 Revenue Code of 1986 and that is exempt from federal income
17 taxation pursuant to Section 501(a) of that code;

18 [~~GG.~~] FF. "person" means a legal entity;

19 [~~HH.~~] GG. "premises" means land, together with all
20 buildings, improvements and personal property located on the
21 land;

22 [~~HH.~~] HH. "progressive jackpot" means a prize that
23 increases over time or as gaming machines that are linked to a
24 progressive system are played and upon conditions established
25 by the board may be paid by an annuity;

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1 ~~[JJ.]~~ II. "public post-secondary educational
2 institution" means an institution designated in Article 12,
3 Section 11 of the constitution of New Mexico and an institution
4 designated in Chapter 21, Articles 13, 14 and 16 [~~and 17~~] NMSA
5 1978;

6 ~~[KK.]~~ JJ. "progressive system" means one or more
7 gaming machines linked to one or more common progressive
8 jackpots;

9 ~~[LL.]~~ KK. "publicly traded corporation" means a
10 corporation that:

11 (1) has one or more classes of securities
12 registered pursuant to the securities laws of the United States
13 or New Mexico;

14 (2) is an issuer subject to the securities
15 laws of the United States or New Mexico; or

16 (3) has one or more classes of securities
17 registered or is an issuer pursuant to applicable foreign laws
18 that, the board finds, provide protection for institutional
19 investors that is comparable to or greater than the stricter of
20 the securities laws of the United States or New Mexico;

21 ~~[MM.]~~ LL. "registration" means a board action that
22 authorizes a company to be a holding company with respect to a
23 company that holds or applies for a license or that relates to
24 other persons required to be registered pursuant to the Gaming
25 Control Act;

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1 ~~MM.~~ MM. "subsidiary" means a company, all or a
2 part of whose outstanding equity securities are owned, subject
3 to a power or right of control or held, with power to vote, by
4 a holding company or intermediary company; ~~and~~

5 NN. "technician" means a person approved by the
6 board to repair and service gaming devices or associated
7 equipment but who is prohibited from programming gaming
8 devices; and

9 OO. "work permit" means a card, certificate or
10 permit issued by the board, whether denominated as a work
11 permit, registration card or otherwise, authorizing the
12 employment of the holder as a gaming employee."

13 Section 2. Section 60-2E-13 NMSA 1978 (being Laws 1997,
14 Chapter 190, Section 15, as amended) is amended to read:

15 "60-2E-13. ACTIVITIES REQUIRING LICENSING.--

16 A. A person shall not conduct gaming unless ~~he~~
17 the person is licensed as a gaming operator.

18 B. A person shall not sell, supply or distribute
19 ~~any~~ a gaming device or associated equipment for use or play
20 in this state or for use or play outside of this state from a
21 location within this state unless ~~he~~ the person is licensed
22 as a distributor or manufacturer, but a gaming operator
23 licensee may sell or trade in a gaming device or associated
24 equipment to a gaming operator licensee, distributor licensee
25 or manufacturer licensee.

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1 C. Except as provided in Subsection D of this
2 section, a person shall not manufacture, fabricate, assemble,
3 program or make modifications to a gaming device or associated
4 equipment for use or play in this state or for use or play
5 outside of this state from any location within this state
6 unless ~~[he]~~ the person is a manufacturer licensee. A
7 manufacturer licensee may sell, supply or distribute only the
8 gaming devices or associated equipment that ~~[he]~~ the
9 manufacturer licensee manufactures, fabricates, assembles,
10 programs or modifies.

11 D. Upon receiving a written request from a person
12 who manufactures associated equipment, the board may waive the
13 requirement for a manufacturer's license on the terms and
14 conditions the board deems necessary as long as the waiver is
15 consistent with the purpose of the Gaming Control Act.

16 E. Except as provided in Section 60-2E-13.1 NMSA
17 1978, a gaming operator licensee or a person other than a
18 manufacturer licensee or distributor licensee shall not possess
19 an unlicensed or illegal gaming device or possess or control a
20 place where there is an unlicensed or illegal gaming device.
21 Any unlicensed or illegal gaming device, except a gaming
22 machine in the possession of a licensee while awaiting transfer
23 to a gaming operator licensee for licensure of the machine, or
24 as provided in Section 60-2E-13.1 NMSA 1978, is subject to
25 seizure and forfeiture pursuant to Section 30-19-10 NMSA 1978.

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